

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ALLIANZ LIFE INSURANCE  
COMPANY OF NORTH AMERICA,

Plaintiff-Counterdefendant,

v.

Cause No. Civ. 05-256 JH/RLP

STEPHEN T. "BUD" RICHARDS,  
JOHN M. "TONY" SCHAEFER,  
JANE ANN DAY,

Defendants-Counterplaintiffs.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on "Allianz Life Insurance Company of North America's Motion to Reconsider November 16, 2005 Order and Supporting Authorities." By way of background, Defendant Schaefer had previously filed a Motion to Compel [Doc. 91] on which the court referred its ruling by its Memorandum Opinion and Order of October 25, 2005 [Doc. 95]. That Order required the parties to meet and confer as to the requested documents and the objections thereto. The court requested that the parties submit one document indicating the documents that were objectionable and the specific objections to the discovery. This was done because the parties' submissions were unwieldy and confusing; the court could not determine what documents were being withheld or why. By meeting and conferring, the parties could possibly determine whether all of the requested documents were necessary, which documents had already been produced and whether any additional ones remained, and whether the objections thereto could be stated specifically rather than in a conclusory manner.


In response to this Order, the parties submitted two separate Supplemental Documents. [Doc.96]. They apparently had a telephone conversation and no attempt to meet and confer in good faith was evident from either party's submission. For his part, Defendant Schaefer indicated a few categories of documents outstanding and Allianz did not address these requests. The court ordered the documents to be produced. Memorandum Opinion and Order of November 15, 2005 [Doc. 97]

Now Allianz has filed its Motion to Reconsider concerning Requests for Production 67, 69, and 71-85. Allianz advances two arguments: first, it "had no opportunity to respond to arguments raised by Schaefer" in his Supplemental Document; and second, the court ordered Allianz to produce documents that did not exist.

As to the first argument, that problem could have been alleviated by following the court's Order [Doc. 95]. As to the second argument, a simple, specific objection (such as "no documents exist responsive to this request") would have easily dispensed with that matter. In any event, if a document does not exist then *ipso facto* it cannot be produced.

IT IS THEREFORE ORDERED that Allianz Life Insurance Company of North America's Motion to Reconsider November 16, 2005 Order and Supporting Authorities [Doc. 103] is denied.

IT IS SO ORDERED.



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Richard L. Puglisi  
United States Magistrate Judge